IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO. 10 OF 2002

S T A T E ... Appellant.

versus

Milagres Corte,
son of Joaquim Corte,
major, resident of
House No.696, Shellim,
Loliem, Canacona, Goa. ... Respondent.

Mr. S. N. Sardessai, Public Prosecutor for the State.

Mr. Arun Bras De Sa, Advocate for the Respondent.

CORAM: P. V. HARDAS, J.

DATED: 1ST AUGUST, 2003.

ORAL JUDGMENT

The State being aggrieved by the acquittal of the Respondent/Accused for an offence punishable under Sections 323, 452, 427, 504 and 506(ii) of the Indian Penal Code as passed by the learned Judicial Magistrate First Class, Canacona, by Judgment dated 31st October, 2001, in Criminal Case No.14/S/97, has filed the present Appeal.

2. The facts as are necessary for the decision of the Appeal are stated hereunder:-

On 15th February, 1997, at about 10.50 p.m., a report at Exh.PW3/A came to be lodged by P.W.3, Gregorio D'Silva against the present Respondent/Accused. An offence on the basis of this report was registered and the investigation commenced. P.W.3, Gregorio D'Silva, was referred to for medical examination and was examined by P.W.1, Dr. Suresh V. Mahale. P.W.1, Dr. Suresh V. Mahale, noticed five injuries. They were (1) Abrasion with haematoma over the forehead, (2) tenderness over left ear, (3) tenderness over left cheek, (4) tenderness over neck(back side) and (5) abrasion 2 x 1 cm. over mouth on the left side inner aspect.

3. According to the doctor, all the injuries were due to hard and blunt object and were simple in nature. On 16th February, 1997, scene of the offence panchanama in the presence of P.W.2, Sandeep Pawar came to be drawn. During the scene of the offence panchanama, broken spectacle and glass pieces came to be attached. After recording the statements of the other witnesses, a charge-sheet against the Respondent/Accused came to be filed.

4. The learned Trial Judge, vide Exh. 6, framed a charge against the Respondent/Accused for the offences punishable under Sections 323, 452, 427, 504 and 506(ii) of the Indian Penal Code. The prosecution in support of its case examined eight witnesses. The defence of the Respondent/Accused was of denial.

5. The learned Trial Court acquitted the Respondent/Accused on the ground (a) that there was delay in lodging the complaint at Exh.PW3/A, (b) the witnesses namely P.W.4, Edwina D'Silva, P.W.5, Ronny D'Silva and P.W.6, Mahabal Pujari were interested witnesses and admittedly, as P.W.3, Gregorio D'Silva was on enemical terms with the Respondent/Accused. The learned Trial Court found that there was no corroboration whatsoever and, therefore, disbelieved the witnesses. (c) the learned Trial Court found major discrepancies not merely of peripheral nature but of the nature which went to the core of the matter and accordingly disbelieved the witnesses.

6. Mr. S. N. Sardessai, learned Public Prosecutor appearing on behalf of the State has urged before me that the evidence of P.W.3, Gregorio D'Silva, stands corroborated by the evidence of P.W.1, Dr. Suresh V. Mahale. The evidence of

P.W.3, Gregorio D'Silva, is further corroborated by the evidence of his wife P.W.4, Edwina D'Silva. It is thus submitted that the learned Trial Court was in error in insisting upon corroboration.

7. With the assistence of the learned Public Prosecutor appearing on behalf of the State and the learned Advocate appearing on behalf of the Respondent, I have perused the evidence of P.W.3, Gregorio D'Silva, P.W.4, Edwina D'Silva, P.W.5, Ronny D'Silva and P.W.6, Mahabal Pujari. P.W.3, Gregorio D'Silva, the first informant states that on 15th February, 1997, he had opened the gate of the compound wall of his house and had taken his motorcycle inside and as he was about to park the motorcycle, the Respondent/Accused who was following him in a white Maruti Car parked his car infront of the gate and came inside and slapped P.W.3, Gregorio D'Silva. The Respondent/Accused is also said to have dealt a fist blow near the eye of P.W.3, Gregorio D'Silva. As a result of the blow given by the Respondent/Accused, P.W.3, Gregorio D'Silva fell down and thereafter, rushed inside. The Respondent/Accused followed him and despite the protest of P.W.4, Edwina D'Silva, forcibly entered the house and thereafter gave fist blows to P.W.3, Gregorio D'Silva. The Respondent/Accused is also

alleged to have abused P.W.3, Gregorio D'Silva. In the cross-examination, certain omissions have been brought out regarding the Respondent/Accused following P.W.3, Gregorio D'Silva in his car and then giving a slap and a fist blow. Omissions have also been brought out regarding the Respondent/Accused entering the house despite the protest of P.W.4, Edwina D'Silva. Certain contradictions at portion A to B vis-a-vis his report is also brought out that the Respondent/Accused had not opened the gate while entering the house but the gate was opened by P.W.5, Ronny D'Silva.

8. P.W.4, Edwina D'Silva in her evidence states that she saw the Respondent/Accused giving fist blows on the forehead and on the other various parts of the body of P.W.3, Gregorio D'Silva after P.W.3, Gregorio D'Silva had entered the house. She also states that Respondnet/Accused abused P.W.3, Gregorio D'Silva and further threatened P.W.3, Gregorio D'Silva that in case P.W.3, Gregorio D'Silva does not vacate the house Respondent/Accused would shoot and kill P.W.3, Gregorio D'Silva. In the cross-examination, she has stated that she had seen that P.W.3, Gregorio D'Silva had a bleeding injury on his head.

9. P.W.5,Ronny D'Silva, who is the nephew of P.W.3, Gregorio D'Silva states that he had opened the gate and thereafter P.W.3, Gregorio D'Silva, had parked his motorcycle. He further states that he saw the Respondent/Accused coming in a car and giving one slap on the cheek of P.W.3, Gregorio D'Silva, as a result of which P.W.3, Gregorio D'Silva, rushed inside his house and the Respondent/Accused following him. He then states that the Respondent/Accused had given blows to P.W.3, Gregorio D'Silva inside the house and had also abused him. In the cross-examination, he has admitted that prior to his deposition, there was discussion between P.W.3, Gregorio D'Silva, P.W.5, Ronny D'Silva and P.W.6, Mahabal Pujari regarding the incident. Further, he has stated that he was on the first floor when he had seen P.W.3, Gregorio D'Silva entering the house. He has also admitted that from the first floor of the house of P.W.3, Gregorio D'Silva, the room where the incident had taken place was not visible.

10. P.W.6 , Mahabal Pujari, states that he was on the first floor when he had seen the Respondent/Accused slapping P.W.3, Gregorio D'Silva. He states that he had also followed P.W.3, Gregorio D'Silva inside the house. He also states that he had

seen Respondent/Accused giving blows to P.W.3, Gregorio D'Silva.

11. All the witnesses have stated that the Respondent/Accused has broken the spectacle and the glass of the window panes. These pieces of glass came to be attached by the Police on the next day of the incident by the said Attachment Panchanama. From the perusal of the evidence of the witnesses, it is seen that there is absolutely no corroboration inter se to the incident as such. In the present case, admittedly, the relations between P.W.3, Gregorio D'Silva and the Respondent/Accused were enemical and in that background, the learned Trial Court felt that it was hazardous to place reliance on the testimony of P.W.3, Gregorio D'Silva. The evidence of P.W.4, Edwina D'Silva, P.W.5, Ronny D'Silva and P.W.6, Mahabal Pujari were in the nature of corroborating evidence to the evidence of P.W.3, Gregorio D'Silva. The learned Trial Court found that the evidence of P.W.3, Gregorio D'Silva, P.W.4, Edwina D'Silva, P.W.5, Ronny D'Silva and P.W.6, Mahabal Pujari did not corroborate and that there were inter se discrepancies. As rightly pointed out by the learned Counsel appearing on behalf of the Respondent/Accused, P.W.6, Mahabal Pujari, in clear terms had stated that in the night the house was

swept. There is also a discrepancy as to the place where the damaged spectacle was found. P.W.3, Gregorio D'Silva, makes no reference to the spectacle having been damaged in the Report at Exh.PW3/A.

12. I have given my anxious consideration to the rival submissions made by the learned Counsel appearing on behalf of the parties. This is an Appeal against acquittal. The view taken by the learned Trial Court is a possible view on the basis of the evidence on record. No perversity by the learned Trial Court in the reasoning has been pointed out. The learned Single Judge of this Court in **State of Maharashtra** v. **Dr. Jawaharlal Motilal Doshi** (1995(4) Crimes 443 has held that an interference in Appeal against acquittal should only be made where order of acquittal is patently perverse or results from a wholly unreasonable appreciation of evidence or is based on an erroneous view of law. The learned Trial Court has appreciated the evidence and has come to a conclusion that in view of the various discrepancies and the delay in lodging the F.I.R. which is only of 1 1/2 hours, casts a reflection on the genesis of the prosecution case. The view taken by the learned Trial Court is a possible view on the face of record and no interference is warranted.

13. In view of this, Criminal Appeal No. 10 of 2002 is dismissed.

P. V. HARDAS, J.

RD.